



MAINE REVENUE SERVICES SALES, FUEL & SPECIAL TAX DIVISION INSTRUCTIONAL BULLETIN

TOBACCO PRODUCTS

This bulletin is intended solely as advice to assist persons in determining, exercising or complying with their legal rights, duties or privileges. It contains general and specific information of interest as well as interpretations and determinations by Maine Revenue Services. Relevant portions of the Tobacco Products Tax law (Title 36 MRSA §§4401 et seq.), and other information referenced in this bulletin are included in Attachment #1. This bulletin pertains to tobacco product retailers, distributors, wholesalers and certain individual purchasers of tobacco products. The relevant law applies to tobacco products purchased and brought into the State for sale or use in Maine when the tobacco products tax has not already been paid.

1. DEFINITIONS

a. Tobacco Products. "Tobacco products" means cigars; cheroots; stogies; periques', granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff; snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco; and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking. The term "tobacco products" **does not include cigarettes.**

b. Distributor. For purposes of Maine Tobacco Products Tax, a "distributor" means any person engaged in any of the following activities within this State:

- Producing or manufacturing tobacco products for sale or use;
- Selling, shipping, transporting, bringing or causing tobacco products to be brought into the State to retailers for sale or use; or
- Importing, receiving, or acquiring tobacco products from a person other than a licensed distributor for sale or use.

c. Retailer. Any person engaged in the business of selling tobacco products to ultimate consumers.

d. Person. "Person" generally means an individual or any type of business or governmental entity. *See Title 36 MRSA §111(3).*

2. DISTRIBUTOR RESPONSIBILITIES

a. Registration and licensing. Each distributor must register with Maine Revenue Services and obtain a Tobacco Distributor's License. The license is non-transferable and must be renewed annually before June 30. Licenses must be displayed in a prominent place in the business and be available for verification. An application for registration is available from Maine Revenue Services.

b. Monthly returns. Each distributor must file a monthly Tobacco Products Tax return. The distributor that first receives or causes untaxed tobacco products to be brought into the State must pay the tax. Returns and supporting schedules are due on or before the last day of each month for

transactions occurring during the previous month. Payment is due when the return is filed. Failure to complete support schedules may prevent returns from being processed in a timely manner. Failure to receive a blank tax return does not excuse a distributor from filing and payment obligations prescribed by law. Distributors are required to maintain accurate records at the principle place of business to substantiate all receipts and sales of tobacco products.

c. Verification. A distributor may not sell or offer to sell tobacco products to a Maine retailer that does not hold a current Retail Tobacco license issued by the Maine Department of Health and Human Services. Distributors should record the appropriate Retail Tobacco license number on all sales invoices.

d. Notification. The Assessor may revoke or suspend the license of any distributor for failure to comply with the terms of the Tobacco Products Tax law. If a Tobacco Products Distributor no longer holds a valid license, whether through cancellation, revocation, suspension, or not renewed under voluntary circumstances, the distributor is responsible for notifying all current customer accounts within ten (10) business days, in writing, that it is no longer licensed as a Maine Tobacco Products Distributor.

e. Importation penalties. Except as provided in sections 1 and 2 below, an unlicensed distributor that imports, sells, or offers untaxed tobacco product for sale in the State is subject to civil fines ranging from \$250 to \$1,000 for each offense and may be criminally prosecuted.

1. Manufacturers. A manufacturer may transport tobacco products into and within Maine for the purpose of marketing and sales, provided that a licensed distributor accounts for the sale or distribution of those products, files all required returns and schedules, and pays any tax due.

2. Personal Use. An individual who is not a distributor may import to; and transport within the state up to 125 cigars or 1 pound of tobacco products for personal use without becoming subject to civil fines and penalties. The Maine Tobacco Products Tax is still owed on these purchases.

3. RETAILER RESPONSIBILITIES

a. Registration and Licensing. Each retailer must verify that it purchases tobacco products only from licensed tobacco distributors. A retailer that purchases tobacco products from someone other than a Maine licensed Tobacco Products Distributor will itself be required to register and license as a distributor. See sections 1b and 2 above.

Maine Revenue Services provides a list of licensed tobacco distributors at least annually to all holders of a current Department of Health and Human Services Retail Tobacco license. A current list is also available on the Maine Revenue Services website, and by mail, email, or fax upon request. The licensed tobacco distributor list should be referenced periodically to verify distributor status and minimize unexpected tax liability and risk. This is particularly important when considering a new tobacco product supplier for your business.

b. Additional requirements.

1. Maine Revenue Services. Retailers selling tobacco products to consumers must also register with Maine Revenue Services for a sales tax registration number.

2. Department of Health and Human Services. The Department of Health and Human Services requires any person engaged in retail sales, including vending machines or free distribution of tobacco products to sell, keep for sale or give away as in the course of trade, to obtain a Retail Tobacco License. Information for contacting the Department of Health and Human Services can be found at the end of this bulletin.

4. INDIVIDUAL CONSUMER RESPONSIBILITIES

a. Reporting and paying. Individual purchasers and users of tobacco products who do not sell tobacco products are not required to be licensed as a distributor, but must report tobacco products purchases that have not previously been taxed in Maine (for example, imports from other states or countries and purchases made over the internet). Individuals must properly complete a Tax Declaration for Other Tobacco Products Form with detailed support schedules for all untaxed purchases made during the previous month. Declarations submitted with incomplete, inaccurate or missing schedule information may not be processed, and will require additional communication with MRS. Payment is due when the return is filed.

b. Limits on importation. An individual may not import more than 125 untaxed cigars or 1 pound of other untaxed tobacco products during any given calendar month without licensing as a Tobacco Distributor. Importation of more than that quantity of untaxed product may be subject to seizure, forfeiture, fines and/or criminal prosecution.

NOTE: Importation quantities and penalties apply **only** to importation violations; all purchased untaxed product is subject to the Maine tobacco excise tax and Maine use tax, including the 125 cigars and the first pound of other tobacco products imported by an individual.

5. ADDITIONAL INFORMATION

The information in this bulletin addresses some of the more common questions regarding the Tobacco Products Tax law. It is not intended to be all-inclusive. Requests for additional information on specific situations should be in writing, should contain full information as to the transaction in question and should be directed to the:

Maine Revenue Services
Sales, Fuel and Special Tax Division
PO Box 9119
Augusta, ME 04332-9119
TEL: 207-624-9609
TTY: NexTalk 1-888-577-6690
<http://www.maine.gov/revenue>

Department of Health and Human Services
Health Inspections Program
Division of Environmental Health
11 State House Station
Augusta, ME 04333-0011
TEL: 207-287-5671
http://www.maine.gov/dhhs/eng/el/el_forms.htm.

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ATTACHMENT 1

36 §111

3. Person. "Person" means an individual, firm, partnership, association, society, club, corporation, financial institution, estate, trust, business trust, receiver, assignee or any other group or combination acting as a unit, the State or Federal Government or any political subdivision or agency of either government.

36 §4401

2. Distributor. "Distributor" means any person engaged in the business of producing or manufacturing tobacco products in this State for sale in this State, any person engaged in the business of selling tobacco products in this State who brings, or causes to be brought, into this State any tobacco products for sale to a retailer or any person engaged in the business of selling tobacco products who ships or transports tobacco products to retailers for sale in this State or any retailer who imports, receives or acquires, from a person other than a licensed distributor, tobacco products for sale within the State.

36 §4402. LICENSES

1. Generally. Every distributor shall obtain a license from the State Tax Assessor before engaging in business. A retailer required to be licensed as a distributor pursuant to this chapter must also hold a current retail tobacco license issued under Title 22, section 1551-A.

3. Expiration and reissuance. A license issued pursuant to this section expires on June 30th of each year unless sooner revoked by the assessor. The license must be prominently displayed on the premises covered by the license and may not be transferred to any other person.

4. Penalties. The following penalties apply to a violation of this section.

A. A distributor that imports into this State any tobacco product without holding a distributor's license issued by the assessor pursuant to this section commits a civil violation for which a fine of not less than \$250 and not more than \$500 must be adjudged.

B. A distributor that violates paragraph A after having been previously adjudicated as violating paragraph A commits a civil violation for which a fine of not less than \$500 and not more than \$1,000 must be adjudged for each subsequent violation.

C. A distributor that sells at wholesale or retail, offers for sale at wholesale or retail or possesses with intent to sell at wholesale or retail any tobacco product without holding a distributor's license issued by the assessor pursuant to this section commits a civil violation for which a fine of not less than \$250 and not more than \$500 must be adjudged.

D. A distributor that violates paragraph C after having been previously adjudicated as violating paragraph C commits a civil violation for which a fine of not less than \$500 and not more than \$1,000 must be adjudged for each subsequent violation.

36 §4403. TAX ON TOBACCO PRODUCTS

3. Imposition. The tax is imposed at the time the distributor brings or causes to be brought into this State tobacco products that are for sale to consumers or to retailers or for use or at the time tobacco products are manufactured or fabricated in this State for sale in this State.

36 §4404. RETURNS; PAYMENT OF TAX AND PENALTY

Every distributor subject to the licensing requirement of section 4402 shall on or before the last day of each month submit, on a form prescribed and furnished by the State Tax Assessor, a report together with payment of the tax due under this chapter stating the quantity and the wholesale sales price of all tobacco products held, purchased, manufactured, brought in or caused to be brought in from outside the State or shipped or transported to retailers within the State during the preceding calendar month. Every such distributor shall keep a complete and accurate record at its principal place of business to substantiate all receipts of tobacco products.

Such monthly reports must contain such further information as the State Tax Assessor may prescribe and must show a credit for any tobacco products exempted as provided in section 4403. Records must be maintained to substantiate the exemption. Tobacco products previously taxed that are returned to a manufacturer because the product has become unfit for use, sale or consumption may be taken as a credit on a subsequent return upon receipt of the credit notice from the original supplier.

A person who is not a distributor licensed pursuant to this chapter who imports, receives or otherwise acquires tobacco products for use or consumption in the State from a person other than a licensed distributor shall file, on or before the last day of the month following each month in which tobacco products were acquired, a return on a form prescribed by the assessor together with payment of the tax imposed by this chapter at the rate provided in section 4403. The return must report the quantity of tobacco products imported, received or otherwise acquired from a person other than a licensed distributor or retailer during the previous calendar month and additional information the assessor may require.

36 §4404-A. IMPORTATION OF TOBACCO PRODUCTS

3. Exception for personal use. A person who is not a licensed distributor may:

A. Transport tobacco products other than cigars into this State and transport those tobacco products from place to place within this State for personal use in a quantity not greater than one pound; or

B. Import or transport cigars into this State and transport those cigars from place to place within this State for personal use in a quantity of no more than 125 cigars.

5. Penalties. The following penalties apply to violations of this section.

A. A person who violates this section commits a Class E crime.

B. A person who violates this section when the person has one or more prior convictions for violation of this section commits a Class D crime. Title 17-A, section 9-A governs the use of prior convictions when determining a sentence.

Violation of this section by a person other than a retailer is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A. It is an affirmative defense to a prosecution under this section that a retailer, alleged to have imported tobacco products or caused tobacco products to be imported, reasonably relied on licensing information annually mailed to the retailer pursuant to section 4402, subsection 6 that listed the company from which the retailer obtained tobacco products as being a licensed distributor.